THE HON'BLE Mr. JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE Mr. JUSTICE S. ANANDA REDDY

WRIT PETITION Nos.3367 AND 3431 OF 2002

DATED: 17-11-2005

Between:

Rallies India Limited, Secunderabad,

Rep. by its Deputy General Manager,

Mr. D.P. Ranande

.. Petitioner

AND

The Deputy Commissioner (CT)

Punjagutta Division, C.T. Complex,

Nampally, Hyderabad & another

.. Respondents

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WRIT PETITION Nos.3367 AND 3431 OF 2002

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COMMON ORDER: (Per Hon'ble Mr. Justice S. Ananda Reddy)

These two writ petitions are filed by the petitioner-Rallies India Limited, a registered dealer, aggrieved by the impugned proceedings, dated 09-01-2002, issued by the 1st respondent-Deputy Commissioner (CT), Punjagutta Division, Hyderabad, with reference to claim of settlement made by the petitioner for the assessment years 1989-90 and 1990-91.

It is the case of the petitioner that for the above assessment years, with reference to part of disallowed claim by the first appellate authority, second appeals were preferred and they were pending before the Sales Tax Appellate Tribunal. However, the Department has come up with a settlement scheme, which was formulated under ordinance No.3/2001, as per which certain concessions were given to the dealers for settling the disputed tax demands, which are outstanding as on 31-03-2001. In pursuance of the said scheme, the petitioner filed applications for both the assessment years. But, however, the 1st respondent while passing the orders, took into account even an item, where the demand raised by the assessing officer was set aside by the first appellate

authority, on the premise that though the issue was remanded by the first appellate authority, grounds were raised before the second appellate authority assailing the said portion of the order. Therefore, the 1st respondent passed the order computing the tax liability even in respect of the demand, which was set aside by the first appellate authority, even though, as on the relevant date, there was no demand at all. Though, this fact was noticed by the 1st respondent, still the impugned orders were passed under the settlement scheme directing the petitioner to pay 50% of the tax including the part of the tax, which was set aside by the first appellate authority. The petitioner, therefore, is aggrieved and has come up with the present writ petition.

At the time of hearing, learned counsel for the petitioner brought to the notice of this Court that after the remand by the first appellate authority, the assessing officer has passed the consequential order, dated 06-03-2000, for both the assessment years granting relief with reference to remanded portion of the claim, virtually, determining the liability only with reference to the dispute, which was subject matter of the second appeals. Therefore, the learned counsel contends that due to inadvertence, the fact of passing of consequential orders was not brought to the notice of the 1st respondent as on the date of passing of the impugned orders of settlement. Therefore, learned counsel sought for appropriate orders.

A counter affidavit is filed on behalf of the respondents conceding the fact that passing of consequential orders by the assessing officer was not brought to the notice of the

1st respondent prior to passing of the impugned orders.

It is, however, stated in the counter affidavit that subsequent to the cut-off date, the petitioner filed a revised Form – II before the appellate Tribunal restricting the appeal only to the extent of the issue, which was dismissed by the first appellate authority. Therefore, the petitioner is not entitled to the relief sought for.

Heard the learned counsel on either side and perused the material on record.

Though, inadvertently, the petitioner has not brought to the notice of the 1st respondent with reference to the consequential orders passed for the relevant assessment years, the fact remains that the disputed tax, as on the cut-off date, is only what was claimed by the petitioner but not what was added by the 1st respondent on the premise that the remanded portion of the dispute was also subject matter of the second appeals. Even if the remanded portion of the order of the first appellate authority was subject matter of the second appeals, still there was no demand subsisting as on the relevant date in respect of that issue. Therefore, the 1st respondent is not justified to include the alleged liability in respect of that issue.

Under the above circumstances, the impugned orders, dated 09-01-2002, passed by the 1st respondent are set aside and the 1st respondent is directed to pass fresh orders restricting the subsisting liability as on the relevant date, within a period of six months from the date of receipt of a copy of this order.

The Writ Petitions are accordingly allowed to the extent indicated above.

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B. SUDERSHAN REDDY, J

Date:17-11-2005

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S. ANANDA REDDY, J

NOTE:

Furnish C.C. of the order within one week.

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